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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,374	11/24/2003	Barry Shapiro	LPI-228US	4730
23377	7590	07/12/2005		
WOODCOCK WASHBURN LLP ONE LIBERTY PLACE, 46TH FLOOR 1650 MARKET STREET PHILADELPHIA, PA 19103			EXAMINER EDGAR, RICHARD A	
			ART UNIT 3745	PAPER NUMBER

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/720,374	Applicant(s) C SHAPIRO ET AL.	
	Examiner Richard Edgar	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005 under 37 C.F.R. §1.111.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 20-34 and 36-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 4, 7-18, 20-34 and 36-56 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments, see page 18, lines 12-19, filed 07 June 2005, with respect to the rejection(s) of claim(s) 1-19, 22-36, 38-49, 52 and 53 under 35 U.S.C. §103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of co-pending application no. 10/431,964.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 5 and 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 1 and 1, respectively, of copending U.S. Patent Application No. 10/431,964 in view of United States Patent No. 5,266,004 (Tsumurai et al. hereinafter).

For double patenting to exist between the rejected claims and the copending claim, it must be determined that the rejected claims are not patentably distinct from the

copending claims. In order to make this determination, it first must be determined whether there are any difference between the rejected claims and the copending claims and, if so, whether those differences render the claims patentably distinct.

Claim 1 recites a "home comfort device" (see line 1 of copending claim 1) comprising a "base" (see line 26 of copending claim 1), a "support column" (see line 2 of copending claim 1), an "elongate housing" (see line 4 of copending claim 1), a "rise height...at least 40% of said longitudinal length of said housing" (see lines 31-32 of copending claim 1), an "air inlet" (see line 7 of copending claim 1), a "vertically oriented elongate air outlet" (see line 8 of copending claim 1), an "air generator" (see line 10 of copending claim 1) and an "impeller" (see line 16 of copending claim 1).

Claim 1 further recites that the longitudinal length of the elongate housing is "at least 1.5 times said maximum cross-sectional width." Copending claim 1 and the claims that depend therefrom do not quantify the housing length in terms of the housing width, therefore this limitation is a difference between the pending and copending claims.

It is clear that all of the elements of claim 1, except the inequality value of the housing length in terms of the housing width, are found in copending claim 1. The fact that copending claim 1 includes at least one more element than pending claim 1 renders the invention of copending claim 1 a "species" of the "generic" invention of pending claim 1. It has been held that the "generic" invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

Tsumurai et al. show an elongate fan having a length to width ratio of 3.6 (600 mm/165 mm) that satisfies Applicants' claimed inequality (see Tsumurai et al. column 5, lines 38-44) for the purpose of designing a small-sized unit.

Since the claimed invention is directed to an elongate fan housing, and Tsumurai et al. teach specific dimensions of an elongate fan housing, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify Applicants' claimed home comfort device so that the elongate housing has an approximate length to cross-section width ratio of 3.6, as taught by Tsumurai et al. for the purpose of designing a small-sized unit.

Regarding claim 3, copending claim 10 recites the elongate housing being "less than about 30 inches". Furthermore, Tsumurai et al. teach the elongate housing being approximately 24 inches (600 mm: col. 5, lines 38-44), which meets Applicants' claimed inequality of "less than about 30 inches."

With respect to claim 5, Tsumurai et al. teach the maximum cross-sectional width of the housing being about 30% of the longitudinal length of the housing (col. 5, lines 38-44), which meets Applicant's claimed inequality of "less than about 90%."

For claim 6, Tsumurai et al. teach the maximum cross-sectional width of the housing being about 6.5 inches, which meets Applicant's claimed inequality of "less than about 12 inches."

Since the claimed invention is directed to an elongate fan housing, and Tsumurai et al. teach specific dimensions of an elongate fan housing, it would have been obvious

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at the time the invention was made to a person having ordinary skill in the art to modify Applicants' claimed home comfort device so that the elongate housing has a length and maximum cross-sectional width of 24 inches and 6.5 inches, respectively, as taught by Tsumurai et al. for the purpose of designing a small-sized unit.

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

Claims 2, 4, 7-18, 20-34 and 36-56 are allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Edgar whose telephone number is (571) 272-4816. The examiner can normally be reached on Mon.-Thur. and alternate Fri., 7 am- 5 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Richard Edgar', with a stylized flourish at the end.

Richard Edgar
Examiner
Art Unit 3745

RE